UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Scranton Products, Inc.,	)	
Hoffman and Kozlansky Realty Co., LLC and	)	
Wyoming S & P, Inc.,	)	**Docket No. CAA-03-2008-0004**
	)	
Respondents	)	

ORDER GRANTING MOTION TO AMEND THE PROPOSED PENALTY

Complainant, the Division Director of the Waste and Chemicals Management Division of the United States Environmental Protection Agency, Region III, filed a Complaint and Notice of Opportunity for Hearing ("Complaint") on October 22, 2007 against Scranton Products, Inc. ("Scranton Products"), Hoffman and Kozlansky Realty Co., LLC ("H&K"), and Wyoming S & P, Inc., for violations of the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M, which was promulgated under Sections 112 and 114 of the Clean Air Act.

After Respondents each filed Answers to the Complaint, Complainant entered a settlement with Scranton Products and H&K to resolve their liability for the violations alleged in the Complaint, and subsequently a Consent Agreement and Final Order ("CAFO") among Complainant, Scranton Products, and H&K was executed and filed on March 13, 2008. In the CAFO, Scranton Products and H&K agreed to pay a civil penalty for their liability in the amount of twenty thousand dollars ($20,000). The CAFO did not resolve the liability of the remaining Respondent, Wyoming S & P, Inc.

Complainant filed a Motion to Amend the Proposed Penalty on March 20, 2008 to reduce the penalty proposed in the Complaint by the amount which the other two Respondents agreed to pay, so that the proposed penalty would be reduced from $59,317 to $39,317. Complainant asserts that it informed Wyoming S & P, Inc. of its intent to file the Motion, but did not receive a response. To date, no response to the Motion has been filed.

The Rules of Practice provide at 40 C.F.R. § 22.13(c) that a complainant may amend the complaint upon motion granted by the presiding judge. While no standard is provided in the Rules for determining whether to grant an amendment, the general rule is that administrative pleadings are "liberally construed and easily amended." *Port of Oakland and Great Lakes Dredge and Dock Company*, 4 E.A.D. 170, 205 (EAB 1992)(quoting *Yaffe Iron & Metal Co., Inc. v. U.S. EPA*, 774 F.2d 1008, 1012 (10th Cir. 1985)). The following standard in Federal court for amendment of pleadings, set forth in *Foman v. Davis*, 371 U.S. 178, 181-182 (1962), is applied to administrative pleadings: "[i]n the absence of ... undue delay, bad faith or dilatory

motive on the part of the movant ... undue prejudice to the opposing party ... [or] futility of amendment," leave to amend pleadings should be allowed.

In this case, where Complainant seeks merely to reduce the total penalty proposed against three Respondents by the amount of penalty agreed to be paid by two of the Respondents, there appears to be no undue prejudice to the remaining Respondent. There is nothing in the case file which would support a finding of any undue delay, bad faith or dilatory motive on the part of Complainant.

Complainant has not submitted a proposed amended complaint, and, where the only amendment is a penalty reduction, and the amendment has not been opposed, there is no need for filing an amended complaint or for an answer to be filed thereto.

Accordingly, the Complainant's Motion to Amend the Proposed Penalty is hereby **GRANTED.**

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Susan L. Biro
Chief Administrative Law Judge

Dated: April 3, 2008
Washington, D.C.